



UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/230,623	06/14/99	MAY	S P98,3235

HILL & SIMPSON  
85TH FLOOR SEARS TOWER  
CHICAGO IL 60606

IM22/0829

EXAMINER

WEINSTEIN, S

ART UNIT	PAPER NUMBER

1761

DATE MAILED:

08/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.	09/230623	Applicant(s)	MAY ET AL
Examiner	S. WEINSTEIN	Group Art Unit	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- Responsive to communication(s) filed on \_\_\_\_\_.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 1 - 10 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1 - 10 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - All
  - Some\*
  - None of the CERTIFIED copies of the priority documents have been
  - received.
  - received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892
- Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Other \_\_\_\_\_

## Office Action Summary

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 USC 103 (a) as being unpatentable over OHBA ('252) in view of applicant's admission of the prior art as further evidenced by Poppel et al (WO '760); further in view of Quaker Oats (GB. '351,) Hillebrand et al (Australia '797), McMahon (GB. '351) QP Corp. (Jap '174), QP Corp ('677), Errass (Europ '046) and Henkel (GB '234).

In regard to claim 1, Ohba discloses a container comprising a base layer and an upper layer on top of the base layer. Not only does Ohba disclose it was conventional to provide a container with two (or more) layers on top of each other, Ohba discloses the layers can be food and specifically, pet food. Claim 1 differs from Ohba in the particular compositions of the layers. As evidenced by applicant's admission of the prior art and further evidenced by Poppel et al, it is well established in the art to provide solid food pieces in a gravy (the so-called chunk-type products) and it is old to provide a substantially solid food stuff (such as the so-called meat loaf products). These products are disclosed as being well established in the food art; particularly the pet food art. Applicant's admission of the prior art even discloses the two components have been combined in a combination meat loaf and chunk type product wherein the meat loaf product surrounds the formulated emulsion product. Since it is conventional in the art

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to provide layered foods or phases as evidenced by Ohba including pet foods, to modify Ohba and substitute for each phase other conventional food components as evidenced by applicants' admission of the prior art and Poppel et al is seen to have been obvious. Quaker Oats is relied on as further evidence of the conventionality of two phase or layered food products, eg. as a pet food; albeit not one on top of the other. McMahon and Hillebrand et al are also relied on as further evidence of layered phases and that the phases may vary as desired. QP Corp (Jap '174), QP Corp ('677), Errass (Europ. '046) and Henkel (GB. '634) are relied on as further evidence of various design phases that are achievable with different components, edible or inedible. Claim 1 recites that the particular concentrations of gravy and solid foodstuff which concentrations are seen to have been an obvious result effective variable. In regard to claims 2 and 3, as noted above, applicants admission of the prior art teaches the conventionality of formulation emulsion products having striated appearances and in the form of flakes. In regard to claim 4, the art taken as a whole (see eg. Poppel et al) teaches it is well established to add starch to gravy for viscosity control and as applicant's admission of the prior art attests to, such starches are conventionally used in the art for applicants' intended function. In regard to claims 5, 9 and 10, the particular viscosity of the components are seen to have been an obvious result effective variable. The art taken as a whole for example teaches that in order to maintain phases separate from each other their viscosities should be manipulated to prevent intermixing of layers. Similarly, the moisture content of conventional pet food layers is either inherent in the conventional pet food layers are or would have been an obvious result effective variable. That is, based on applicants' admission

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of the prior art, applicants appear to be using conventional compositions (eg. gelled meat loaf-claim 7) and the recited moisture content would be expected to be conventional. In regard to claim 10, the method claim, is seen to have been obvious in view of the art taken as a whole for the reasons given above. That is, filling two or more layers in a container is conventional as taught by the art taken as a whole including Ohba, and the sealing and heating of canned phased foods is also taught by the art taken as a whole including Poppel et al and Quaker Oats.

Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

S. Weinstein/vr

08/18/00

08/23/00

*Steve Weinstein*  
STEVEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 122176 /  
8/23/00

<p>37 CFR 1.501 INFORMATION DISCLOSURE STATEMENT IN A PATENT (use several sheets if necessary)</p>				MAR 3 1999	Docket No. P98,3235	Serial No. 09/230,623	
					Applicant May et al.		
					Filing Date January 28, 1999	Group Art Unit Unknown	
U.S. PATENT DOCUMENTS							
Examiner's Initials		Document Number	Date	Name	Class	Subclass	Filing Date If appropriate
	AA						
	AB						
	AC						
	AD						
	AE						
	AF						
	AG						
	AH						
	AI						
	AJ						
	AK						
FOREIGN PATENT DOCUMENTS							
		Document Number	Date	Country	Class	Subclass	Translation
							Yes
	AL						
	AM						
	AN						
	AO						
	AP						
OTHER ART (Including Author, Title, Date, Pertinent Pages, Etc.)							
<i>SW</i>	AQ	Cat Foods & Goods Guide 1992 Pet Supplies Guide, Cat Edition.					
<i>SW</i>	AR	Cat Foods & Goods Guide 1994 Pet Supplies Guide, Cat Edition.					
	AS						
	AT						
Examiner	<i>SWINGSTEIN</i>		Date Considered	<i>7/29/00</i>			
<p>*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609.      Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.</p>							

<b>Notice of References Cited</b>			Application No.	Applicant(s)			
			09/230623	MAY ET AL			
			Examiner	Group Art Unit		Page <u>1</u> of <u>2</u>	
			S. WEINSTEIN	1761			
<b>U.S. PATENT DOCUMENTS</b>							
*	DOCUMENT NO.	DATE	NAME			CLASS	SUBCLASS
A	3738847	6/73	BECKTEL			-	-
B	2344901	3/44	ROUTN			-	-
C	2975732	3/61	DE PASQUALE			-	-
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<b>FOREIGN PATENT DOCUMENTS</b>							
*	DOCUMENT NO.	DATE	COUNTRY	NAME		CLASS	SUBCLASS
N	1327351	8/73	G.BRITAIN	QUAKER OATS		-	-
O	50797/96	10/96	AUSTRALIA	HILLEBRAND		-	-
P	1583351	1/81	G.BRITAIN	McMANUS		-	-
Q	61-100174	5/86	JAPAN	QP CORP		--	-
R	59-31677	2/84	JAPAN	QP CORP		-	-
S	675046	10/95	EUROPE	ERRASS		--	-
T	1486634	9/77	G.BRITAIN	NENKEL		-	-
<b>NON-PATENT DOCUMENTS</b>							
*	DOCUMENT (Including Author, Title, Source, and Pertinent Pages)					DATE	
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\* A copy of this reference is not being furnished with this Office action.  
 (See Manual of Patent Examining Procedure, Section 707.05(a).)

<b>Notice of References Cited</b>			Application No.	Applicant(s)		
			09/230623 S. WEINSTEIN	MAY ET AL 1761		
			Examiner	Group Art Unit		
				Page <u>2</u> of <u>2</u>		
<b>U.S. PATENT DOCUMENTS</b>						
*	DOCUMENT NO.	DATE	NAME		CLASS	SUBCLASS
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<b>FOREIGN PATENT DOCUMENTS</b>						
*	DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUBCLASS
N	WO 94/26666	11/94	WO/WIPO	MANDANAS	—	—
O						
P						
Q						
R						
S						
T						
<b>NON-PATENT DOCUMENTS</b>						
*	DOCUMENT (Including Author, Title, Source, and Pertinent Pages)				DATE	
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\* A copy of this reference is not being furnished with this Office action.  
 (See Manual of Patent Examining Procedure, Section 707.05(a).)

Part of Paper No. 5



## UNITED STATES DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

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Washington, D.C. 20231

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/230,623 06/14/99 MAY

E P98-02285

EXAMINER

IM6X/0403  
BELL, BOYD & LLOYD, LLC  
P.O. BOX 1136  
CHICAGO IL 60690-1136

SEARCHER/TELETYPE	
ART UNIT	PAPER NUMBER

1761  
DATE MAILED:

04/03/01

DUE 7-3-01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

RECEIVED  
BELL, BOYD & LLOYD  
INTELLECTUAL PROPERTY DOCKET

APR 09 2001 TK

ATTY: RMB  
DOCKET #: 112701-029

## Office Action Summary

Application No.	09/238623	Applicant(s)	MAY ET AL
Examiner	S WEINSTEIN	Group Art Unit	1761

**—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—**

### Period for Reply

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- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. §133).

### Status

Responsive to communication(s) filed on 12/11/05.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 1-10 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1-10 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
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- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- |  |   |
|--|---|
| <input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ | <input type="checkbox"/> Interview Summary, PTO-413                     |
| <input checked="" type="checkbox"/> Notice of Reference(s) Cited, PTO-892                  | <input type="checkbox"/> Notice of Informal Patent Application, PTO-152 |
| <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948           | <input type="checkbox"/> Other _____                                    |

## Office Action Summary

Art Unit: 1761

### **DETAILED ACTION**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba ('252) in view of applicant's admission of the prior art as further evidenced by Poppel et al .('504), further in view of Quaker Oats (G.B. '351), Hillebrand et al (Austral '797), McMahon (GB'351), QP Corp (Jap '174), QP Corp. ('677), Errass (Europ. '046) and Henkel (GB '234) for the reasons fully and clearly detailed in the Office action mailed 8/29/00, page No. 5 further in view of Waldburger ('254), McGonigle ('174), Cease ('537), Bliley ('086), Stover ('245) and Rogers et al ('094)

Claim 1 recites that the base layer comprises solid food pieces in a gravy and the upper layer is a substantially solid foodstuff and that the substantially solid foodstuff is capable of supporting the base layer when the pet food product is inverted. As noted previously applicant's admission of the prior art discloses that applicants are not the inventors of either of the layers. The recited base layer is the admitted state of the art chunk-type product and the recited upper layer is the admitted state of the art meat loaf product. The latter would inherently be "capable" of supporting the former due to the physical properties of the meat loaf product. In fact, as

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noted previously, applicants have admitted that the two different food components have been brought together in a composite form wherein the solid meat loaf product has enclosed the chunk type product so that the former can obviously support the latter. (Note that Poppel ('504) has been substituted for the PCT version of Poppel but they are exact duplicates). Since Ohba discloses vertically stratified pet food layers in a can where it would be evident that due to the gelatinizer, any of the layers will support the other layers when inverted, to modify Ohba and employ equally conventionally layers also known to be brought together in a composite form would have been *prima facie* obvious in view of the art taken as a whole. As to which layer is above or below the other layer would have been an obvious function of whether one is to spoon out the layers or invert the container and dispense the layers. If one chooses to employ the latter technique, then it would have been obvious to fill in reverse order from that desired when presented, inverted on a plate. Not only is this common sense, it is obvious in view of the art taken as a whole. It is also noted that it seems clear Ohba will invert the container of Figure 2, since the objective is to have the pet eat the layers in a selected order. If the product is spooned out, all layers would be exposed to the animal.

As evidenced by Biley, Waldburger, McGonigle, Cease, and Stover, it is notoriously old in the art to fill containers with discrete layers of different foods in the opposite order in which they are desired to be presented for eating if the product is to be dispensed by inverting the container. These references include various foods including solid foods and gravies where the objective is to invert the container and provide the gravy on top of the solid food. It is noted that

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these references rely on freezing for stratification, but the art taken as a whole clearly discloses gelation for the same result. Although Rogers et al apparently does not invert the container to dispense the food product, Rogers et al nevertheless discloses a stratified product by providing a solid meat) product above gelatinized gravy. Therefore, the art taken as a whole clearly teaches to modify Ohba with the conventional pet food compositions and provide the solid meat loaf type product above the gravy chunk type/gravy component if one wanted the former below the latter upon inverting the container.

All of applicants' remarks have been fully and carefully considered but are thought to have either been addressed above or are meet in view of the new ground of rejection.

Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

Weinstein/dh

March 19, 2001

Corrected

March 28, 2001

*Stan Wark*  
SIXEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 132 1761  
4/3/01

<b>Notice of References Cited</b>		Application No.	Applicant(s)	
		09/230,623	MAY ET AL	
		Examiner	Group Art Unit	Page <u>1</u> of <u>1</u>
		S. WEINSTEIN	1767	

**U.S. PATENT DOCUMENTS**

*	DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS
A	5792504	8/11/98	POPPET ET AL	426	644
B	4328254	5/82	WALDNER	426	114
C	4574174	3/86	MCGOWAN	426	114
D	3244577	4/66	REASE	426	114
E	7768086	10/56	BLILEY	426	90
F	3005245	6/35	STOVER	426	115
G	3681094	8/72	ROGERS ET AL	426	92
H					
I					
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**FOREIGN PATENT DOCUMENTS**

*	DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUBCLASS
N						
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**NON-PATENT DOCUMENTS**

*	DOCUMENT (Including Author, Title, Source, and Pertinent Pages)	DATE
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\* A copy of this reference is not being furnished with this Office action.  
 (See Manual of Patent Examining Procedure, Section 707.05(a).)



UNITED STATES PATENT AND TRADEMARK OFFICE

mk  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/230,623	06/14/1999	STEPHEN MAY	P98.3235	4102

7590 12/12/2001

BELL, BOYD & LLOYD, LLC  
P.O. BOX 1135  
CHICAGO, IL 60690-1135

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

11

DATE MAILED: 12/12/2001

DUE: 3-12-02

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DEC 18 2001 TK

ATTY: RMB  
DOCKET #: 112701-029

# Office Action Summary

8W-11  
Application No. 09/230623 Applicant(s) MAX ET AL  
Examiner S. WEINSTEIN Group Art Unit 1761

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- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

Responsive to communication(s) filed on 8/6/2001

This action is FINAL.

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 All  Some\*  None of the:  
 Certified copies of the priority documents have been received.  
 Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

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 Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

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Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba ('252) in view of applicants' admission of the prior art as further evidenced by Poppel et al. ('504), further in view of Quaker Oats (GB '351), Hillebrand et al. (Austral '797), McMahon (GB'351), Q. P. Corp ('677), Q.P. Corp (Jap. '174), Errass (Europe. '046) and Henkel (GB '234) further in view of Waldburger ('254), McGonigle ('174), Cease ('537), Bliley ('086), Stover ('245) and Rogers et al ('094) for the reasons given in the Office Actions mailed 8/29/00, Paper No. 5 and 4/3/01, Paper No. 8 .

All of applicants' urging filed 8/6/2001, Paper No. 10, have been fully and carefully considered but are not found to be convincing. Patentability is not predicated on the number of references cited. Rather, patentability is predicated on what the art taken as a whole teaches. Where teachings relied upon to show obviousness were repeated in a number of references , the conclusion of obviousness was strengthened. See In re Gorman 18 USCQ2d 1888 in this regard. The fact is, the art taken as a whole is replete with examples of packaged products wherein products are placed in a package in the reverse order from which they are desired to be presented

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once they are removed from the package. It is also urged that the art taken as a whole does not teach applicants products. This urging is not convincing. Poppel et al. discloses both of the recited components are conventional. The substantially solid foodstuff reads on the gelled meat loaf product of Poppel et al (and applicants' admission of the prior art) and the solid food pieces in a gravy reads on the chunks and gravy of Poppel et al. Poppel et al even discloses the recited solid food piece/gravy ratio. See e.g., Example 4 in this regard. As noted previously, the art taken as a whole teaches it was known to provide composites of solid loaf and chunk so that the solid loaf would clearly support the chunk material. It is also not an unexpected result. It would be expected that a solid loaf would support food pieces. It is also urged that the product maintains its structural integrity as well as separation of one product phase from another. This urging is directed to limitations not found in the claims. The claims do not recite that the two products maintain a clear line of separation between them. They are silent in this regard. The product is recited at one moment in time which could be immediately upon filling. The claims are silent as to the transverse extent of either "layer" or whether the gravy is flowable in the can. Thus, without such recitations, the components could move around. Note, also that the claims only recite that the solid food stuff would be "capable" of supporting the base layer when the pet food product is inverted. This could read on quickly inverting the products in the can, and does not give any indication of non-intermingling layers. Thus, the claims are silent as to non-mixing stratified layers. In any case, the art taken as a whole teaches that it was well established in the art that viscosities can be adjusted if necessary to maintain layers discrete and stratified. It is

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also urged that the layered arrangement allows the liquid/solid pieces to come out of a can after the solid layer (which is less messy?) However, the art taken as a whole is replete with examples wherein a liquid layer is added to a container first so that it will come out of the container on top of the solid product. Examples include sauce and pasta, gravy and meat, syrup and ice cream, etc.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

Weinstein/dh

December 6, 2001

Corrected - December 10, 2001

*Steven Weinstein*  
STEVEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 132 1761  
12/12/01



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/230,623	06/14/1999	STEPHEN MAY	P98.3235	4102

29157 7590 07/31/2002

BELL, BOYD & LLOYD LLC  
P. O. BOX 1135  
CHICAGO, IL 60690-1135

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
1761	17

DATE MAILED: 07/31/2002

SUE: 10/31/02

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED  
BELL, BOYD & LLOYD  
INTELLECTUAL PROPERTY DEPT.  
ATTY. RMB AUG 05 2002  
DOCKET # 112401-029

AS-FF

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/230623	MAY ET AL
	Examiner	Group Art Unit
	S. WEINSTEIN	1761

*-The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address-*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- Responsive to communication(s) filed on 4/22/08.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 1 1; 453 O.G. 213.

**Disposition of Claims**

- Claim(s) 1-10 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1-10 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

**Application Papers**

- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- All  Some\*  None of the:
- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

**Attachment(s)**

- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

**Office Action Summary**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba ('252) in view of Poppel et al ('504) and applicant's admission of the prior art or vice, versa, that is Poppel et al and applicants admission of the prior art in view of Ohba, further in view of Waldburger ('254), McGonigle ('174), Cease ('537), Bliley ('086), Stover ('245), Rogers et al ('094) and Docker (EP 361893) further in view of Quaker Oats (Jap '174), QP corp ('677), QP Corp (174), Errass (EP '046) and Henkel (GB '234) essentially for the reasons detailed in the Office actions mailed 8/29/00, 4/3/01 and 12/12/01.

In summary , and in regard to claim 1, Ohba discloses a canned pet food comprising a base layer and an upper layer wherein the base layer and the upper layer remain stratified before serving and wherein the upper layer would be capable of supporting the base layer if the layers are inverted. Claim 1 differs from Ohba et al in the particular composition of the layers. Poppel et al and applicants' admission of the prior art teach that the composition of each of the layers is conventional. That is, applicants are not the inventor of solid pieces in gravy and they are not the inventors the solid foodstuff. The recited base layer composition is readable on the conventional "formulated emulsion" with gravy and the solid foodstuff is readable on the conventional "meat loaf"; both taught by Poppel et al. Poppel et al and applicants' admission of the

prior art even teach that both compositions have even been packaged in the same container wherein the solid foodstuff enelops the formulated emulsion. To modify Ohba and substitute conventional compositions for other conventional compositions for their art recognized and applicants intended function would have been obvious in view of the art taken as a whole. It is noted that since Ohba already teaches maintaining food components stratified, and a since Poppel et al and applicants admission of the prior art teaches the formulated emulsion and solid foodstuff are maintained separated in their own way, it would have been obvious to maintain the formulated emulsion and solid foodstuff separate in the package. The art is replete with various examples of maintaining food and non food products in separate, distinct strata or phases for appearance in and out of the package wherein the phases or components are maintained separate without mixing by manipulating variables such as viscosity and density of the components. This is exactly applicants means of preventing mixing as well: "Due to the density and viscosity of the mixture of the solid food pieces and gravy and the density and viscosity of the settable foodstuff, clear and distinct layers are formed in the can" – page 8, para 1 of the specification. Finally, claim 1 and to a greater extent claim 10, recite that the components are placed in a container in a certain way, As disclosed, this is to allow the solid foodstuff to be removed from a container first with the formulated emulsion and gravy thereafter so that the latter is disposed on top of the solid foodstuff. The orientation of the components in a container (and consequently the orientation of the components upon being removed from the container) is seen to have been an obvious matter of choice in view of the art taken as a whole. Applicants

objective is to provide a "visually attractive" product once removed from the container with an "attractive layer" of solid pieces of gravy above a clearly defined layer of a substantially solid foodstuff. As evidenced by Waldburger, etc. it is notoriously old in the art to position food components in a container so that when the container is inverted, the components are oriented one above the other in the preferred way. Not only is this concept notoriously old, it is also notoriously old in the art that most of the food products that are packaged this way include a liquid based product as the lower most layer in the container and a solid based product on top so that when the container is inverted, the liquid based product is presented on top of the solid based product. This is precisely applicants' objective as well. To therefore modify the combination and provide the recited sequence for its art recognized and applicants' intended function would have been obvious with no new or unexpected result derived there from. Docker is newly cited as further evidence of stratifying products (in this case a solid and a gravy containing solids) so that they empty out in the desired orientation. Similarly, employing Poppel et al, as the primary reference, it would have been obvious to modify Poppel et al and take the two conventional components and provide them in layers, which is shown to be conventional by Ohba, Waldburger and the art taken as a whole for applicants' objective of presenting visually attractive and useful arrangements.

Thus, applicants invention takes two food components which are conventional as taught by the art taken as a whole, orients them in separate layers which is taught by the art taken as a whole, and positions them in a certain sequence so that they are removed and positioned outside the container in a certain sequence which

is also taught by the art taken as a whole so that "new and interesting textures and appearances" are provided. The textures are not new and the appearance of a liquid based product on a solid based product is also not new. The art taken as a whole teaches the combination would have been obvious. Applicants appear to imply that there is an unexpected result in that it is urged that the gravy apparently allows for easy dispensing of the solid food product. There is no support for this urging in the specification as originally filed. That is, the specification is silent as to this alleged advantage and there is no factual evidence on the record in this regard. It would appear, of course, that in order for the gravy to provide such a result, the gravy would have to be liquid to some degree and the solid food product would not fill the cross sectional space to completely block the space in a hardened fashion.

All of applicants' remarks filed 4/22/02 have been fully and carefully considered and is thought to have been responded to either above or in previous Office actions.

Any inquiry concerning this communication from the examiner should be directed to Steve Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-0661. The fax phone numbers for the organization where this application is assigned are (703) 872-10 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

Weinstein/LR  
July 22, 2002

*COLLECTED*  
7/24

<b>Notice of References Cited</b>			Application No.	Applicant(s)		
			09/230623	MAY ET AL		Examiner
<b>U.S. PATENT DOCUMENTS</b>						
*	DOCUMENT NO.	DATE	NAME		CLASS	SUBCLASS
A						
B						
C						
D						
E						
F						
G						
H						
I						
J						
K						
L						
M						
<b>FOREIGN PATENT DOCUMENTS</b>						
*	DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUBCLASS
N	361873	4/90	EURO	DOCKER	-	-
O						
P						
Q						
R						
S						
T						
<b>NON-PATENT DOCUMENTS</b>						
*	DOCUMENT (Including Author, Title, Source, and Pertinent Pages)					DATE
U						
V						
W						
X						

\* A copy of this reference is not being furnished with this Office action.  
 (See Manual of Patent Examining Procedure, Section 707.05(a).)

Part of Paper No. 17